

of claims. Accordingly, the undersigned requested that the Examiner withdraw the May 18<sup>th</sup> Office Action and fully consider the March 2<sup>nd</sup> Amendment.

The Examiner requested that Applicant respond in writing to the May 18<sup>th</sup> Office Action.

The following remarks have been submitted in consequence of the Examiner Interview. Accordingly, Applicant respectfully requests that the Restriction under MPEP § 821.03 be withdrawn, and that the claims submitted in the March 2<sup>nd</sup> Amendment be considered.

The Office Action, quoting MPEP § 821.03 and 37 C.F.R. 1.145, states that if, “after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered”. The Office Action further asserts that “Amended claims submitted on 3/2/04 are directed to an invention that is independent or distinct from the invention previously claimed for the following reasons: Previously presented claims are drawn to monitoring and managing the performance of existing power generating assets...Amended claims submitted 3/2/04 are drawn to recommending a power generating facility to a business entity.”

Applicant respectfully traverses the assertions included in the Office Action. More specifically, Applicant respectfully submits that (1) the amended claims included in the March 2<sup>nd</sup> Amendment are not directed to an invention that is independent or distinct from the invention claimed in the originally filed patent application; and (2) the Office Action dated May 18, 2004 is an improper Restriction under MPEP § 821.03 because it withdraws from consideration all claims submitted in the March 2<sup>nd</sup> Amendment while apparently only objecting to independent Claim 1, it fails to address any of independent Claims 14, 28, 35, 43, 52, 74, or 78, it fails to clearly provide an elected group of claims, and it fails to provide a complete action on all claims included in an elected group of claims. Accordingly, as discussed below in detail, Applicant requests that the Restriction under MPEP Section 821.03 be withdrawn.

As stated above, the Office Action asserts that “Amended claims submitted on 3/2/04 are directed to an invention that is independent or distinct from the invention previously claimed for the following reasons: Previously presented claims are drawn to monitoring and managing the performance of existing power generating assets...Amended claims submitted 3/2/04 are drawn to recommending a power generating facility to a business entity.”

However, Claim 1, as amended and with the changes indicated, recites in relevant part as follows: “A method for ~~at least one of monitoring the performance of existing power generating assets and making a management recommendation on a selection of~~ recommending a power generating facility to a business entity interested in acquiring a power generating facility out of various available power generating facilities....” In other words, original Claim 1 was directed to a method for at least one of “monitoring the performance of existing power generating assets and making a management recommendation on a selection of a power generating facility out of various available power generating facilities”; and amended Claim 1 is directed to a method for “recommending a power generating facility to a business entity interested in acquiring a power generating facility”. Since original Claim 1 and amended Claim 1 are both directed to a method for recommending a power generating facility to a business entity, both of these claims are directed to the same invention. Accordingly, Claim 1, as recited in the March 2<sup>nd</sup> Amendment, is not directed to an invention that is independent or distinct from the invention claimed in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 1, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 2-13 depend from independent Claim 1, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 2-13, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

As to Claims 14-83, the Office Action fails to provide any objection or reason for withdrawing these claims from consideration. However, since the Office Action indicates

that Claims 14-83 have been withdrawn from consideration, Applicant will address these claims hereinbelow.

Claim 14, as amended and with the changes indicated, recites in relevant part as follows: “A method for determining a value for at least one or more power generating facilities plant...” Applicant submits that original Claim 14 and amended Claim 14 are both directed to a method for “determining a value for at least one power plant”. Accordingly, Claim 14, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 14, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 15-27 depend from independent Claim 14, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 15-27, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 28, as amended and with the changes indicated, recites in relevant part as follows: “A computer program embodied on a computer readable medium for managing evaluation and selection of a power plant out of ~~various acquisition candidates, comprising a~~ plurality of power plants for a business entity interested in acquiring at least one power plant...” Applicant submits that original Claim 28 and amended Claim 28 are both directed to a computer program for “managing evaluation and selection of a power plant out of a plurality of power plants”. Accordingly, Claim 24, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 28, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 29-33 depend from independent Claim 28, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 29-33, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 35, as amended and with the changes indicated, recites in relevant part as follows: “A computer program embodied on a computer readable medium for managing evaluations of power generating facilities....” Applicant submits that original Claim 35 and amended Claim 35 are both directed to a computer program for “managing evaluations of power generating facilities”. Accordingly, Claim 35, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 35, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 36-42 depend from independent Claim 35, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 36-42, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 43, as amended and with the changes indicated, recites in relevant part as follows: “Apparatus for recommending at least one power generating facility from a plurality of power generating facilities to a business entity interested in acquiring a power generating facility....” Applicant submits that original Claim 43 and amended Claim 43 are both directed to the same apparatus. Accordingly, Claim 43, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 43, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 44-51 depend from independent Claim 43, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 44-51, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 52, as amended and with the changes indicated, recites in relevant part as follows: “A web-based system for selecting a power generating facility from a plurality of power generating facilities by a business entity interested in acquiring a power generating facility and utilizing a strategic decision model....” Applicant submits that original Claim 52 and amended Claim 52 are both directed to a web-based system for selecting a power generating facility from a plurality of power generating facilities that utilizes a strategic decision model. Accordingly, Claim 52, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 52, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 53-73 depend from independent Claim 52, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 53-73, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 74, as amended and with the changes indicated, recites in relevant part as follows: “A database comprising....” Applicant submits that original Claim 74 and amended Claim 74 are both directed to the same database. Accordingly, Claim 74, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 74, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 75-77 depend from independent Claim 74, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 75-77, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claim 78, as amended and with the changes indicated, recites in relevant part as follows: “A computer to facilitate an online strategic decision making process to select a power generating facility from a plurality of power generating facilities by a business entity for acquisition purposes ~~out of all acquisition candidates....~~” Applicant submits that original Claim 78 and amended Claim 78 are both directed to a computer to facilitate an online strategic decision making process to select a power generating facility from a plurality of power generating facilities by a business entity for acquisition purposes. Accordingly, Claim 78, as recited in the March 2<sup>nd</sup> Amendment, is clearly directed to the same invention as claimed and described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claim 78, as amended by the March 2<sup>nd</sup> Amendment, be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Claims 79-83 depend from independent Claim 78, which is submitted for consideration. For at least the reasons set forth above, Applicant respectfully requests that Claims 79-83, as amended by the March 2<sup>nd</sup> Amendment, also be fully considered and the Restriction under MPEP § 821.03 be withdrawn.

Furthermore, Applicant respectfully submits that Claims 1-83, as recited in the March 2<sup>nd</sup> Amendment, are consistent with one another and recite the invention as described in the originally filed patent application.

For at least the reasons set forth above, Applicant respectfully requests that Claims 1-83, as amended by the March 2<sup>nd</sup> Amendment, be fully considered by the Examiner, and that the Restriction under MPEP § 821.03 be withdrawn.

In addition to the arguments set forth above, Applicant further submit that the Office Action dated May 18, 2004 is an improper Restriction under MPEP § 821.03 for at least the

following reasons: (1) it withdraws from consideration all claims submitted in the March 2<sup>nd</sup> Amendment while apparently only objecting to independent Claim 1, (2) it fails to provide an elected group of claims, and (3) it fails to provide a complete action on all claims included in an elected group of claims.

For at least the reasons set forth above, Applicant respectfully requests that Claims 1-83, as amended by the March 2<sup>nd</sup> Amendment, be fully considered by the Examiner, and that the Restriction under MPEP § 821.03 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Daniel M. Fitzgerald  
Registration No. 38,880  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070